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MEDICAL MARIJUANA

On November 2, 2010, Wisconsin voters in Dane County and the City of River Falls were asked if they support medical access to marijuana for seriously ill residents so long as their doctor recommends its use. The nonbinding referendum passed 75.5 percent to 24.5 percent in Dane County and 68 percent to 32 percent in River Falls. While the results of the advisory referenda do not change law, they may reflect a public interest in legalizing the medical use of marijuana.

Bills to legalize the medical use of marijuana have been introduced in the Wisconsin Legislature since the late 1990s. During the 2009-2010 legislative session, two bills on this subject were introduced, Senate Bill 368 and Assembly Bill 554. Nationally, 14 states and the District of Columbia (D.C.) have adopted laws related to the medical use of marijuana. This brief provides background information on the issue of legalizing the medical use of marijuana and current law and legislation related to its use in Wisconsin. This brief does not address the broader subject of decriminalization of marijuana use.

CURRENT LAW

Federal law classifies controlled substances into five different categories or "schedules." Schedules I and II include substances which have a high potential for abuse. Under the federal Controlled Substances Act, tetrahydrocannabinols (THC), the hallucinogenic contained in

marijuana, is classified as a Schedule I controlled substance. Schedules III, IV, and V contain substances with lower potentials for abuse for which there is a currently accepted medical use. Federal law prohibits the possession, manufacture, distribution, and dispensing of any Schedule I controlled substance and makes no exemption for the use of marijuana for medical purposes.

In Wisconsin, the primary statutes governing drug-related crimes are contained in Chapter 961, Wisconsin Statutes, the Uniform Controlled Substances Act. It prohibits the manufacture, distribution, and delivery of marijuana, and the possession of marijuana with intent to manufacture, distribute, or deliver it (see Table 1 for the penalties).

The law also prohibits a person from possessing or attempting to possess marijuana. A person who violates this prohibition and who has no prior drug convictions is guilty of a misdemeanor and may be fined not more than \$1,000, sentenced to a county jail for up to six months, or both. For a second or subsequent offense, a person is guilty of a Class I felony. Wisconsin law also contains certain prohibitions regarding drug paraphernalia, as outlined in Subchapter VI, Drug Paraphernalia, in Chapter 961, Wisconsin Statutes. The Wisconsin Controlled Substances Board has the authority to add, delete, or reschedule substances enumerated in the five schedules by administrative rule.

Table 1: Manufacturing, Distributing, or Delivering the Controlled Substance THC and Possession of THC with Intent to Manufacture, Distribute or Deliver

Amount	Penalty
200 grams or less, or 4 or fewer plants containing THC	Class I felony
Between 200 grams and 1,000 grams, or between 4 plants and 20 plants containing THC	Class H felony
Between 1,000 grams and 2,500 grams, or between 20 plant sand 50 plants containing THC	Class G felony
Between 2,500 grams and 10,000 grams, or between 50 plants and 200 plants containing THC	Class F felony
More than 10,000 grams or more than 200 plants containing THC	Class E felony

MEDICAL MARIJUANA DEBATE

The debate over legalizing medical marijuana has involved physicians, elected officials, scientists, and the general public.

Proponents of the legal use of medical marijuana argue that there should be a distinction between the medical and nonmedical use of marijuana. Marijuana, they claim, is a safe and effective treatment for dozens of conditions, including cancer, AIDS, multiple sclerosis, pain, migraines, glaucoma, and epilepsy. Proponents support reclassifying marijuana's status as a Schedule I controlled substance to a status that would allow for more comprehensive research to be done on its safety and efficacy in alleviating the symptoms or effects of certain debilitating medical conditions or treatments. A distinction between the medical and nonmedical use of marijuana would ensure that physicians are not penalized for discussing marijuana as a treatment option with their patients, and patients who use marijuana upon their physicians' advice are not penalized.

Opponents of medical marijuana argue that there is no reliable evidence that marijuana has medical value since existing evidence is anecdotal, unscientific, or not replicated. Some argue that marijuana is too

dangerous to be used as a medicine, citing scientific studies that show marijuana as a harmful and addictive drug. Opponents also believe that medical marijuana is unnecessary because certain FDA-approved drugs, including Marinol, a prescription pill that contains THC, work better than marijuana for certain conditions. Public safety is another argument used against the medical use of marijuana: specifically, marijuana will lead to harder drug use and criminal activity. Opponents believe that legalizing the use of medical marijuana may lead to increased access to the drug by young people and that the push to legalize it is a wedge to loosen the nation's drug laws.

LEGISLATION IN WISCONSIN

Unlike some states, Wisconsin law does not provide for a statewide ballot initiative process whereby voters have the power to change law. In Wisconsin, advisory referenda can be placed on ballots, as they were in Dane County and River Falls, but the results of the referenda are nonbinding. They are used only to measure opinions on a policy issue and may not necessarily lead to legislation.

Since 1997, several bills to legalize the medical use of marijuana have been introduced. None of the proposals, however, have passed. During the 2009-10 legislative

session, two bills related to the medical use of marijuana were introduced, Senate Bill 368 and a companion bill, Assembly Bill 554. SB-268 was introduced on October 27, 2009, by Senators Jon Erpenbach and Lena Taylor. AB-554 was introduced on November 5, 2009, by Representatives Mark Pocan and Spencer Black. The Senate Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue and the Assembly Committee on Public Health met in a joint public hearing on December 15, 2009, at the State Capitol. No further action was taken prior to the end of the 2009 regular session.

The bills, if passed, would have established a medical necessity defense to marijuana-related prosecutions and forfeitures for persons having or undergoing certain debilitating medical conditions or treatments, including cancer, glaucoma, multiple sclerosis, AIDS or HIV, Crohn's disease, and post-traumatic stress disorder. To qualify for this defense a person would have to obtain a valid registry identification card from the Department of Health Services (DHS) or a valid out-of-state registration card or have a written certification from a physician documenting the person's debilitating medical condition or treatment. A qualifying patient would be able to invoke the defense if he or she acquires, possesses, cultivates, transports, or uses marijuana for a medical condition or treatment, as long as the amount does not exceed the maximum authorized amount and only under certain circumstances. For example, patients could not drive or

operate heavy machinery while under the influence of marijuana, and they could not smoke it in schools, parks, and many other public spaces.

Qualifying patients would be allowed to grow up to 12 marijuana plants or buy up to 3 ounces of marijuana from nonprofit corporations, known as compassion centers. DHS would be required to license and regulate these compassion centers, as well as establish and administer a state registry for medical users of marijuana.

MEDICAL MARIJUANA LAWS IN OTHER STATES

Fourteen states and Washington, D.C. have enacted laws that legalize the medical use of marijuana (see Table 2). Although the state laws do not affect the federal laws, in 2008, U.S. Attorney General Eric Holder announced that the Obama administration would not use federal resources to prosecute users and suppliers of medical marijuana in the states that legalized it.

The laws in the 14 states and D.C. allow certain individuals to cultivate and use marijuana for medical purposes. The individuals must comply with the respective state's medical marijuana law. Most states that have legalized the medical use of marijuana do not provide a method for obtaining it. California, New Mexico, Rhode Island, and more recently, New Jersey and D.C., are the only entities that currently have policies and procedures that allow qualifying patients to legally obtain medical marijuana.

Table 2: Fourteen States and D.C. Have Enacted Laws That Legalize Medical Marijuana

State	Year Passed	How Passed (Yes Vote)
Alaska	1998	Ballot Measure 8 (58%)
California	1996	Proposition 215 (56%)
Colorado	2000	Ballot Amendment 20 (54%)
Washington, D.C.	2010	Amendment Act B18-622 (13-0 vote)
Hawaii	2000	Senate Bill 862 (32-18 House; 13-12 Senate)
Maine	1999	Ballot Question 2 (61%)
Michigan	2008	Proposal 1 (63%)
Montana	2004	Initiative 148 (62%)
Nevada	2000	Ballot Question 9 (65%)
New Jersey	2010	Senate Bill 119 (48-14 House; 25-13 Senate)
New Mexico	2007	Senate Bill 523 (36-31 House; 32-3 Senate)
Oregon	1998	Ballot Measure 67 (55%)
Rhode Island	2006	Senate Bill 0710 (52-10 House; 33-1 Senate)
Vermont	2004	Senate Bill 76 (22-7) HB 645 (82-59)
Washington	1998	Initiative 692 (59%)

FOR MORE INFORMATION

For more resources on the medical use of marijuana, see the Wisconsin Legislative Reference Bureau's Tap the Power publication at:

<http://www.legis.state.wi.us/lrb/pubs/ttp/ttp-01-2010.html>

For more information on drug laws in Wisconsin, see the Wisconsin Legislative Council Legal Memorandum at:

http://www.legis.state.wi.us/lc/publications/lm/lm_2003_05.pdf

For more information on other state medical marijuana programs, see Hawaii Legislative Reference Bureau publication "Access, Distribution, and Security Components of State Medical Marijuana Programs," at:

<http://lrbhawaii.info/reports/legrrpts/lrb/2010/mj.pdf>

For more information on referendas, see the Wisconsin Legislative Reference Bureau's Governing Wisconsin publication at:

http://www.legis.state.wi.us/lrb/gw/gw_13.pdf

For more information on the Federal Controlled Substances Act, see:

<http://uscode.house.gov/download/pls/21C13.txt>

For video or audio of the December 15, 2009 public hearing of 2009 Senate Bill 368 and 2009 Assembly Bill 554, see:

http://www.wiseeye.org/wisEye_programming/ARCHIVES-jointcommittees.html#

View Chapter 961, Wisconsin Statutes, Uniform Controlled Substances Act at:

<http://www.legis.state.wi.us/statutes/Stat0961.pdf>

View a copy of 2009 Senate Bill 368 at: <http://www.legis.state.wi.us/2009/data/SB-368.pdf>

View a copy of Assembly Bill 554 at: <http://www.legis.state.wi.us/2009/data/AB-554.pdf>